

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 402 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- Nos. 1 to 5 No

STATE OF GUJARAT

Versus

GADHVI BACHUBHAI AMRUBHAI

Appearance:

MS.VALIKARIMWALA, AGP for Appellant.

MR KG SHETH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/04/98

ORAL JUDGEMENT

This is defendant's Second Appeal.

The brief facts are that the plaintiff-respondent was serving as police constable under District Superintendent of Police, Rajkot. He was placed under

suspension by the Superintendent of Police in connection with a criminal case pending in the Court of J.M.F.C.Morbi. The said Criminal Case No. 542 of 1972 arose out of a complaint but after trial the plaintiff-respondent was acquitted. In spite of this, suspension of the respondent was not revoked rather continued. The departmental proceedings were initiated thereafter by District Superintendent of Police, Rajkot against the respondent vide letter dated 30.11.1972. The departmental proceedings concluded. In the inquiry it was found that three charges were proved against the plaintiff-respondent. A show cause notice was issued why punishment of dismissal from service be not imposed upon the respondent. In the suit it was alleged that the statement before the Inquiry Officer was not recorded on oath. The departmental proceedings were alleged to be illegal and without jurisdiction inasmuch as sanction of the Head of the Department viz. Inspector General of Police was not obtained. It was also alleged that the District Superintendent of Police made it a prestige issue against the respondent. Consequently the suit for declaration and permanent injunction was filed against the present appellant by the plaintiff-respondent.

The suit was contested by the appellant on the ground that the inquiry was conducted in accordance with rules and the Inquiry Officer was not bound to follow strictly the rules of evidence and procedure and the Inquiry Officer could have relied upon such evidence as it thought proper. Jurisdiction of the Trial Court was also challenged.

The Trial Court decreed the suit of the plaintiff respondent declaring that the impugned order was void as sanction of the Inspector General of Police was not obtained. Consequently the relief of injunction was also granted, that the appellant should not proceed further after issuing show cause notice to the respondent. Consequential monetary benefits were also ordered by the Trial Court to be paid to the plaintiff - respondent.

Feeling aggrieved, an appeal was filed in the lower Appellate Court which was dismissed. Hence, this Second Appeal.

This Court did not formulate any substantial question of law at the time of admission of the appeal. On the other hand all the substantial questions formulated in the memo of appeal were considered to be substantial questions.

After examining the substantial questions formulated in the memo of appeal I find that irrelevant questions were formulated and the only material question is whether the departmental proceedings against the respondent after his acquittal in the criminal case could be initiated only on the initiative of District Superintendent of Police without obtaining sanction or permission of the Head of the Department viz. Inspector General of Police.

I have heard the learned Counsel for the parties on this substantial question of law. Rule 455 of the Police Manual empowers the Head of the Department to take a decision to hold inquiry against the delinquent official. Admittedly, the District Superintendent of Police before initiating departmental proceedings, after acquittal of the respondent in the criminal trial, did not obtain sanction from the Head of the Department viz. Inspector General of Police. The Inspector General of Police did not decide at any stage or point of time to take action against the respondent nor he has accorded sanction for initiating departmental proceedings against the respondent. No authority was given to the District Superintendent of Police by the Inspector General of Police to proceed departmentally against the respondent. As such decision to take departmental proceedings against the respondent stands vitiated in view of non observance of the provision of rule 445 of Police Manual. Consequently the two Courts below did not commit any illegality in holding and declaring the impugned order and letter dated 30.11.1972 to be illegal and void. Consequence thereof is that the Trial Court was justified in granting consequential relief of permanent injunction not to proceed further in compliance of show cause notice issued to the respondent. Likewise the Trial Court was further justified in granting monetary benefits to the respondent in its judgment.

In the result I do not find any merit or substance in this Appeal which is hereby dismissed. No order as to costs.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt